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(Original Signature of Member)

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. \_\_\_\_\_

To amend the Federal Trade Commission Act to provide that the advertising or sale of a mislabeled copy-protected music disc is an unfair method of competition and an unfair and deceptive act or practice, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. BOUCHER (for himself and Mr. DOOLITTLE) introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# A BILL

To amend the Federal Trade Commission Act to provide that the advertising or sale of a mislabeled copy-protected music disc is an unfair method of competition and an unfair and deceptive act or practice, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*



1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Digital Media Con-  
3 sumers’ Rights Act of 2002”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The limited introduction into commerce of  
7 “copy-protected compact discs” has caused con-  
8 sumer confusion and placed increased, unwarranted  
9 burdens on retailers, consumer electronics manufac-  
10 turers, and personal computer manufacturers re-  
11 sponding to consumer complaints, conditions which  
12 will worsen as larger numbers of such discs are in-  
13 troduced into commerce.

14 (2) Recording companies introducing new forms  
15 of copy protection should have the freedom to inno-  
16 vate, but should also be responsible for providing  
17 adequate notice to consumers about restrictions on  
18 the playability and recordability of “copy-protected  
19 compact discs”.

20 (3) The Federal Trade Commission should be  
21 empowered and directed to ensure the adequate la-  
22 beling of prerecorded digital music disc products.



1 **SEC. 3. INADEQUATELY LABELED COPY-PROTECTED COM-**  
2 **PACT DISCS.**

3 The Federal Trade Commission Act (15 U.S.C. 41  
4 et seq.) is amended by inserting after section 24 the fol-  
5 lowing new section:

6 “INADEQUATELY LABELED COPY-PROTECTED COMPACT  
7 DISCS

8 “SEC. 24A. (a) DEFINITIONS.—In this section:

9 “(1) The term ‘Commission’ means the Federal  
10 Trade Commission.

11 “(2) The term ‘audio compact disc’ means a  
12 substrate packaged as a commercial prerecorded  
13 audio product, containing a sound recording or re-  
14 cordings, that conforms to all specifications and re-  
15 quirements for Red Book Audio and bears a duly li-  
16 censed and authorized ‘Compact disc Digital Audio’  
17 logo.

18 “(3) The term ‘prerecorded digital music disc  
19 product’ means a commercial audio product com-  
20 prised of a substrate in the form of a disc in which  
21 is recorded a sound recording or sound recordings  
22 generally in accordance with Red Book Audio speci-  
23 fications but that does not conform to all licensed  
24 requirements for Red Book Audio: *Provided*, That a  
25 substrate containing a prerecorded sound recording  
26 that conforms to the licensing requirements applica-



1 ble to a DVD-Audio disc or a Super Audio Compact  
2 Disc is not a prerecorded digital music disc product.

3 “(4) The term ‘Red Book Audio’ means audio  
4 data digitized at 44,100 samples per second (44.1  
5 kHz) with a range of 65,536 possible values as de-  
6 fined in the ‘Compact Disc-Digital Audio System  
7 Description’ (first published in 1980 by Philips N.V.  
8 and Sony Corporation, as updated from time to  
9 time).

10 “(b) PROHIBITED ACTS.—(1) The introduction into  
11 commerce, sale, offering for sale, or advertising for sale  
12 of a prerecorded digital music disc product which is mis-  
13 labeled or falsely or deceptively advertised or invoiced,  
14 within the meaning of this section or any rules or regula-  
15 tions prescribed by the Commission pursuant to subsection  
16 (d), is unlawful and shall be deemed an unfair method of  
17 competition and an unfair and deceptive act or practice  
18 in commerce under section 5(a)(1).

19 “(2) Prior to the time a prerecorded digital music  
20 disc product is sold and delivered to the ultimate con-  
21 sumer, it shall be unlawful to remove or mutilate, or cause  
22 or participate in the removal or mutilation of, any label  
23 required by this section or any rules or regulations pre-  
24 scribed by the Commission pursuant to subsection (d) to  
25 be affixed to such prerecorded digital music disc product.



1 Any person violating this subsection shall be deemed to  
2 have engaged in an unfair method of competition and an  
3 unfair and deceptive act or practice in commerce under  
4 this Act.

5 “(c) MISLABELED DISCS.—For purposes of this sec-  
6 tion, a prerecorded digital music disc product shall be con-  
7 sidered to be mislabeled if it—

8 “(1) bears any logo or marking which, in ac-  
9 cordance with common practice, identifies it as an  
10 audio compact disc;

11 “(2) fails to bear a label on the packaging in  
12 which it is sold at retail in words that are prominent  
13 and plainly legible on the front of the packaging  
14 that—

15 “(A) it is not an audio compact disc;

16 “(B) it might not play properly in all de-  
17 vices capable of playing an audio compact disc;  
18 and

19 “(C) it might not be recordable on a per-  
20 sonal computer or other device capable of re-  
21 cording content from an audio compact disc; or

22 “(3) fails to provide the following information  
23 on the packaging in which it is sold at retail in  
24 words that are prominent and plainly legible—



1           “(A) any minimum recommended software  
2 requirements for playback or recordability on a  
3 personal computer;

4           “(B) any restrictions on the number of  
5 times song files may be downloaded to the hard  
6 drive of a personal computer; and

7           “(C) the applicable return policy for con-  
8 sumers who find that the prerecorded digital  
9 music disc product does not play properly in a  
10 device capable of playing an audio compact disc.

11       “(d) RULEMAKING.—(1) The Commission may de-  
12 velop such rules and regulations as it deems appropriate  
13 to prevent the prohibited acts set forth in subsection (b)  
14 and to require the proper labeling of prerecorded digital  
15 music disc products under subsection (c).

16       “(2)(A) The Commission may develop such additional  
17 rules and regulations as it deems necessary to establish  
18 appropriate labeling requirements applicable to new audio  
19 discs, using new playback formats (including DVD-Audio  
20 discs and Super Audio Compact Discs), if the Commission  
21 finds, with respect to a particular type of disc, that—

22           “(i) the manner in which the discs are displayed  
23 at retail, packaged, or marketed results in substan-  
24 tial consumer confusion about the playability and re-  
25 cordability of such discs;



1           “(ii) the discs are not appropriately labeled with  
2           respect to their playability on standard audio com-  
3           pact disc playback devices; and

4           “(iii)(I) the discs are not recordable on a per-  
5           sonal computer; or

6           “(II) if the discs are recordable, a recording  
7           made from such a disc is bound to a particular de-  
8           vice.

9           “(B) To the maximum extent practicable, the Com-  
10          mission shall seek to ensure that any rules and regulations  
11          developed under this paragraph impose labeling require-  
12          ments comparable to the requirements imposed under the  
13          rules and regulations developed under paragraph (1).”.

14          **SEC. 4. REPORT TO CONGRESS.**

15          Not later than 2 years after the date of enactment  
16          of this Act, the Federal Trade Commission shall submit  
17          to Congress a report detailing the following:

18                 (1) The extent to which prerecorded digital  
19                 music disc products (as defined in section 24A of  
20                 the Federal Trade Commission Act, as added by sec-  
21                 tion 3 of this Act) have entered the market over the  
22                 preceding 2 years.

23                 (2) The extent to which the Commission has re-  
24                 ceived complaints from consumers about the imple-  
25                 mentation of return policies for consumers who find



1 that a prerecorded digital music disc product does  
2 not play properly in a device capable of playing an  
3 audio compact disc (as defined in section 24A of  
4 such Act).

5 (3) The extent to which manufacturers and re-  
6 tailers have been burdened by consumer returns of  
7 devices unable to play prerecorded digital music disc  
8 products.

9 (4) The number of enforcement actions taken  
10 by the Commission pursuant to section 24A of such  
11 Act.

12 (5) The number of convictions or settlements  
13 achieved as a result of enforcement actions taken by  
14 the Commission pursuant to section 24A of such  
15 Act.

16 (6) Any proposed changes to this Act, with re-  
17 spect to prerecorded digital music disc products,  
18 that the Commission believes would enhance enforce-  
19 ment, eliminate consumer confusion, or otherwise  
20 address concerns raised by consumers with the Com-  
21 mission.

22 **SEC. 5. FAIR USE AMENDMENTS.**

23 (a) **SCIENTIFIC RESEARCH.**—Subsections (a)(2)(A)  
24 and (b)(1)(A) of section 1201 of title 17, United States  
25 Code, are each amended by inserting after “title” in sub-



1 section (a)(2)(A) and after “thereof” in subsection  
2 (b)(1)(A) the following: “unless the person is acting solely  
3 in furtherance of scientific research into technological pro-  
4 tection measures”.

5 (b) FAIR USE RESTORATION.—Section 1201(c) of  
6 title 17, United States Code, is amended—

7 (1) in paragraph (1), by inserting before the pe-  
8 riod at the end the following: “and it is not a viola-  
9 tion of this section to circumvent a technological  
10 measure in connection with access to, or the use of,  
11 a work if such circumvention does not result in an  
12 infringement of the copyright in the work”; and

13 (2) by adding at the end the following new  
14 paragraph:

15 “(5) It shall not be a violation of this title to manu-  
16 facture, distribute, or make noninfringing use of a hard-  
17 ware or software product capable of enabling significant  
18 noninfringing use of a copyrighted work.”.

